

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JACKSON INVESTMENT GROUP,  
LLC

Plaintiff,

vs.

JOHNNY TOMAS AND JOHN C.  
FRANCIS,

Defendants.

Case No. 1:16-cv-04389-RWS

**DECLARATION OF JOSH C. HESS IN SUPPORT OF PLAINTIFF'S  
RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Pursuant to 28 U.S.C. § 1746 I, Josh Hess, declare as follows:

1. My name is Josh C. Hess. I am over 21 years of age and am competent to testify. The facts stated here are based on my personal knowledge.
2. I am counsel for Plaintiff and am an associate with Kilpatrick Townsend & Stockton LLP.
3. I make this Declaration in support of Plaintiff's Response in Opposition to Defendants' Motion to Dismiss.
4. The documents Plaintiff submits as exhibits to the Opposition are publicly-available documents of which the Court may take judicial notice. Fed. R.

Evid. 201. Many are publicly available on the Securities and Exchange Commission's EDGAR page for Blue Earth, which is available here:  
[https://www.sec.gov/cgi-bin/browse edgar?action=getcompany&CIK=0001422109&type=&dateb=&owner=exclude&start=0&count=100](https://www.sec.gov/cgi-bin/browse%20edgar?action=getcompany&CIK=0001422109&type=&dateb=&owner=exclude&start=0&count=100)

5. Attached as Exhibit A is a true and correct copy of Blue Earth, Inc.'s Form 10-Q for the period ended March 31, 2013. The document is publicly available at the following location:

[https://www.sec.gov/Archives/edgar/data/1422109/000139390513000225/bblu\\_10q.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390513000225/bblu_10q.htm)

6. Attached as Exhibit B is a true and correct copy of excerpts from FASB ASC 805. The Financial Accounting Standards Board's Accounting Standards Codification is available online at the following location:

<https://asc.fasb.org/help&cid=1175804733759>

7. Attached as Exhibit C is a true and correct copy of excerpts from FASB ASC 360. The Financial Accounting Standards Board's Accounting Standards Codification is available online at the following location:

<https://asc.fasb.org/help&cid=1175804733759>

8. Attached as Exhibit D is a true and correct copy of Blue Earth, Inc.'s amended Form 10-K for the fiscal year ended December 31, 2013. The document

is publicly available at the following location: [https://www.sec.gov/Archives/edgar/data/1422109/000139390514000280/bblu\\_10ka.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390514000280/bblu_10ka.htm)

9. Attached as Exhibit E is a true and correct copy of Blue Earth, Inc.'s Form 10-Q for the period ended March 31, 2014. The document is publicly available at the following location: [https://www.sec.gov/Archives/edgar/data/1422109/000139390514000311/bblu\\_10q.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390514000311/bblu_10q.htm)

10. Attached as Exhibit F is a true and correct copy of FASB ASC 835-20-05-01. The Financial Accounting Standards Board's Accounting Standards Codification is available online at the following location: <https://asc.fasb.org/help&cid=1175804733759>

11. Attached as Exhibit G is a true and correct copy of the Agreement and Plan of Merger among IPS Acquisition Corp., Blue Earth Inc., IPS Power Engineering Inc. & Global Renewable Energy Group, Inc., and their stockholders. The document is publicly available at [https://www.sec.gov/Archives/edgar/data/1422109/000139390513000361/bblu\\_ex101.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390513000361/bblu_ex101.htm)

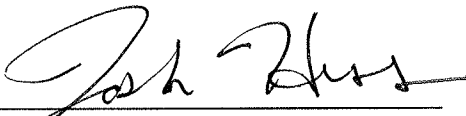
12. Attached as Exhibit H is a true and correct copy of Blue Earth, Inc.'s Form 10-K for the fiscal year ended December 31, 2014. The document is publicly available at the following location: [https://www.sec.gov/Archives/edgar/data/1422109/000139390515000109/bblu\\_10k.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390515000109/bblu_10k.htm)

13. Attached as Exhibit I is a true and correct copy of PCAOB Release No. 105-2017-001. The document is publicly available at the following location: <https://pcaobus.org/Enforcement/Decisions/Documents/105-2017-001-HJ-Associates.pdf>

14. Attached as Exhibit J is a true and correct copy of a Form 8-K that Blue Earth, Inc. filed on May 26, 2011. The document is publicly available at the following location: [https://www.sec.gov/Archives/edgar/data/1422109/000139390511000341/blue\\_8k.htm](https://www.sec.gov/Archives/edgar/data/1422109/000139390511000341/blue_8k.htm)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2017,

  
\_\_\_\_\_  
Josh C. Hess

**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2017, I electronically filed the foregoing and all attachments with the Clerk of Court using the CM/ECF system, which will automatically send email documentation of such filing to all attorneys of record.

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*Counsel for Plaintiff*